IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 951 OF 1989

The State of Maharashtra
(through the Special Land
Acquisition Officer, Metro
Centre No.XII, Taluka Panvel,
Dist. Raigad. ... Appellant.

Versus.

Shri Krishna Shankar Govari,
Adult, residing at Kamothe,
Taluka Panvel, Dist.Raigad. ... Respondent.

Shri K.K.Tated, A.G.P.for the Appellant.

None for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 3rd April, 2006.

ORAL JUDGMENT.

1. Heard Shri Tated, learned A.G.P. for the Appellant. None appears for the Respondent.

2. The Appellant-State of Maharashtra has taken exception to the Judgment and Award dated 26th October 1988 passed by the learned Civil Judge, Senior Division, Raigad at Alibag. By the said Judgment and Award, the reference made under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act")

has been partly allowed.

3. The acquired land is Survey No.194, Hissa No.5 situated at village Kamothe, Taluka Panvel, District Raigad. Notification under section 4 of the said Act was issued on 3rd February 1970 notifying the said land for acquisition for public purpose of development of City of Navi Mumbai. The award was made under section 11 of the said Act on 28th August 1986.

4. The Land Acquisition Officer awarded compensation at the market rate of Rs.3/- per sq.meter. The Reference Court has enhanced the market value to Rs.15/- per sq.meter. The other statutory benefits were granted by the Reference Court. Shri Tated, the learned A.G.P. appearing for the Appellant submitted that in response to the service of notice under section 9(3)(4) of the said Act, the Appellant did not file any claim. He submitted that section 25 of the said Act as it stood prior to the amendment made by the Act 68 of 1984 will squarely apply and therefore, the Reference Court had no jurisdiction to enhance the compensation.

5. I have considered the submissions. A perusal of the record shows that the Award under section 11 of the said Act is in printed format. The Award notes that individual notice under section 9 has been issued to the

Claimant on 25th September 1975. Under the Award the date of receipt of the postal acknowledgement of the notice is kept blank. Further part of the printed award states that the notice is received back with an endorsement "Brother is not accepting it hence returned". In the application for reference filed by the Respondent, a specific statement was made that the notice under section 9 (3)(4) of the said Act was not served on the Respondent. The said fact is contested in the written statement of the Appellant.

6. The Respondent stepped into the witness box. In paragraph 1 of his deposition, he has stated that he has not received notice under section 9 of the said Act and that he claimed that he came to know about the award only after he made enquiries in the office of the Special Land Acquisition Officer. The Respondent was cross-examined by the Government Pleader. I find that on this aspect there is no cross-examination. No material is produced by the Appellant before the Reference Court to show that the Respondent was served with the notice under section 9 of the said Act. In view of this factual position, the contention of the Appellant that the notice was duly served on the Respondent cannot be accepted. If there is no evidence to show that the notice under section 9(3)(4) of the said Act was served on the Respondent, the learned

A.G.P. cannot rely upon unamended section 25 of the said Act. Hence the submission deserves to be rejected.

7. The acquisition pertains to the village Kamothe, Panvel Taluka, District Raigad. There are decisions of the Division Bench of this Court which have attained finality holding that the market value of the lands at village Kamothe which were notified under notification under section 4 of the said Act on 3rd February 1970 was in the range of Rs.20/- to Rs.26/- per sq.meter. In the present case, the Reference Court has awarded market value of Rs.15/- per sq.meter. In the circumstances, no fault can be found with the impugned Judgment and Award.

The Appeal is dismissed with no order as to costs.

Judge.